11 U.S.C. §523(a)(5)

Voigt v. Voigt, Adversary No. 94-6483-fra
Wallace Voigt, Case No. 694-62911-fra7

4/13/1995 FRA Unpublished

In 1986 a judgment was entered in Texas dissolving the parties' marriage and providing for a judgment in favor of plaintiff and against defendant in the sum of $20,000. The purpose of the judgment was to "partially compensate petitioner and her attorneys in their protection of the community estate." Defendant filed for bankruptcy under Chapter 7 in 1986, but failed to schedule the plaintiff as a creditor. The case was reopened in 1991 to list the plaintiff as a creditor and closed immediately thereafter.

The court agreed with the plaintiff in denying defendant's motion for summary judgment. The debt is either of a type that was discharged in the first bankruptcy or it isn't. Unlike cases involving fraud and the like, it is not necessary to file a complaint to determine dischargeability of a debt under § 523(a)(5). Thus, a claim coming under that subsection was not discharged in the first bankruptcy, regardless of whether it was included in the debtor's schedules. Whether or not the debt established by the Texas judgment is in fact nondischargeable under § 523(a)(5) requires an examination of a number of factors which must be dealt with in the adversary proceeding.

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

IN RE WALLACE DALE VOIGT, Debtor.	)	Case No. 694-62911-fra7
DELORES VOIGT, Plaintiff, vs. WALLACE DALE VOIGT, Defendant.	)	Adversary No. 94-6483-fra MEMORANDUM OPINION

This matter comes before the court on defendant's motion for summary judgment. For the reasons described in this Memorandum Opinion, the motion is denied.

The affidavits and papers filed by the parties establish that:

In April of 1986 a judgment was entered in the District Court of Travis County, Texas dissolving the parties' marriage, and, among other things, providing for a judgment in favor of plaintiff herein and against defendant in the sum of

$20,000.00. The purpose of the judgment was to "partially compensate petitioner and her attorneys in their protection of the community estate".

Defendant filed a petition for relief under chapter 7 in 1986. In that case defendant failed to schedule plaintiff as a creditor. He reopened the 1986 case in September 1991, and listed plaintiff as a creditor. The case was closed immediately thereafter. The plaintiff claims that she never received notice of this proceeding, which fact defendant disputes.

The pending chapter 7 case was filed in July 1994. Plaintiff has filed an adversary proceeding seeking a declaration that the Texas judgment is nondischargeable under 11 U.S.C. s 523(a)(5).

The parties agree that the only issue presented to the court by defendant's motion for summary judgment is whether the claim was discharged as a result of the 1986 case, in light of the reopening in 1991.

11 U.S.C. § 523(a) provides that a discharge under § 727 does not discharge an individual debtor from any debt to a spouse or former spouse "for alimony to, maintenance for, or support of such spouse. . . .in connection with a separation agreement, divorce decree or other order of a court of record. . . ." Unlike cases involving fraud, defalcation, and the like, it is not necessary to file an adversary proceeding to

establish that a debt of this sort is nondischargeable. See 11 U.S.C. § 523(c)(1). It follows that the treatment of the claim in the first bankruptcy is immaterial. If the claimed debt is nondischargeable spousal support it was not discharged in the first case, and will not be discharged in any subsequent case.

//////

Plaintiff relies on In re Beezley, 994 F.2d 1433 (9th Cir. 1993). The Beezley court held that after a no asset no bar date chapter 7 is closed, dischargeability is unaffected by scheduling, and the amendment of schedules would have been a pointless exercise. 994 F.2d at 1434. Accordingly, the court held that it was not an abusive discretion to deny the debtor's motion to reopen the case. The court pointed out that if the debt is of a type covered by 11 U.S.C. § 523(a)(3)(B) (which includes claims such as the one at bar) it is nondischargeable, and reopening the case would not have had the effect of discharging it.

Whether or not the debt established by the Texas judgment is in fact nondischargeable under § 523(a)(5) requires an examination of a number of factors, which must be dealt with in subsequent proceedings in this adversary case.

Defendant's motion for summary judgment is denied.

FRANK R. ALLEY, III
Bankruptcy Judge